

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

York College
1125 E. 8th Street
York, Nebraska 68467

EPA ID Number: NER000501254

Respondent.

Proceeding under Sections 3008(a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

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) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
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) Docket No. RCRA-07-2004-0045
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COMPLAINT

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations at 40 C.F.R. Part 262.

Parties

3. The Complainant is the Director of the Air, RCRA, and Toxics Division of the EPA, Region VII, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985 and EPA Delegation No. R7-8-9-A, dated January 1, 1995.

4. The Respondent is York College located at 1125 E. 8th Street, York, Nebraska.

Statutory and Regulatory Framework

5. Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), allows a state to implement its own hazardous waste program "in lieu" of the federal program. The State of Nebraska received interim authorization for its RCRA program on May 14, 1982, and final authorization effective February 7, 1985 (50 FR 3345, January 24, 1985). The State of Nebraska's authority governing hazardous waste is found at Title 128 of the Nebraska Administrative Code (NAC)(Title 128, Rules and Regulations Governing Hazardous Waste Management in Nebraska), promulgated pursuant to Neb. Rev. Stat. § 81-1505(13). For purposes of this Complaint and Consent Agreement/Final Order, RCRA violations are cited using the requirements of the Code of Federal Regulations contained in the authorized state statutory and regulatory provisions.

6. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA shares enforcement authority with states with authorized programs and can initiate action for violations of authorized state programs. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA must provide notice to a state with an authorized program prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

7. Pursuant to 40 C.F.R. § 262.11 and Nebraska's authorized hazardous waste program at NAC Title 128, Chapter 19, 002, generators of a "solid waste" are required to determine if such a solid waste is a RCRA "hazardous waste."

8. At 40 C.F.R. Part 261 and NAC Title 128, Chapters 11-15, EPA and Nebraska have established regulatory standards for the identification of hazardous waste.

Factual Background

9. The Respondent, York College, is a private college located in the State of Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

10. As a result of Respondent's operations, Respondent generates hazardous waste from its chemistry laboratory. Laboratory wastes generated by the Respondent include:

a. waste chemicals exhibiting the hazardous characteristic of ignitability including calcium carbide, phosphorus, and aluminum carbide (bearing the waste code D001);

b. waste chemicals exhibiting the hazardous characteristic of corrosivity including ammonium sulfide and chlorosulfonic acid (bearing the waste code D002);

c. waste chemicals exhibiting the hazardous characteristic of toxicity including mercury (bearing the waste code D009); and

d. acutely hazardous wastes including sodium cyanide, potassium cyanide, and sodium azide (bearing the waste codes P106, P098, and P105, respectively).

11. On March 11, 2003, the EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at Respondent's facility.

12. During the March 11 CEI, the inspector observed wastes from the chemistry department stored in the basement of the McGee Building at Respondent's facility.

Findings of Violation

13. The allegations stated in paragraphs 1 through 12 above are herein incorporated.

Count 1 - Failure to Conduct a Hazardous Waste Determination

14. Pursuant to 40 C.F.R. § 262.11 and NAC Title 128, Chapter 19, 002, a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2 and NAC Title 128, Chapter 4, 002 using the methods prescribed in NAC Title 128, Chapters 5, 6, 8 and 11 through 15, must determine if the solid waste is a hazardous waste.

15. At the time of the March 11 CEI, Respondent was storing approximately 187 containers of waste at its facility. Respondent indicated that hazardous waste determinations had not been made on these materials.

16. Respondent's failure to make a hazardous waste determination is a violation of 40 C.F.R. § 262.11 and NAC Title 128, Chapter 19, 002.

CONSENT AGREEMENT

17. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

18. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

19. Respondent consents to the issuance of the Final Order and agrees to perform the compliance activities set forth in paragraph 1 of the Final Order. The Parties agree that Respondent will pay \$0 for the violation noted herein based on Respondent's financial inability to pay any penalty at this time.

20. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Respondent and Complainant each agree to bear their own costs and attorney's fees.

22. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

23. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

24. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties up to \$27,500 per day of non-compliance.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, IT IS ORDERED that:

Compliance Actions

1. Respondent shall submit the following information to EPA on July 15, 2004, for the time period covering January 1, 2004 to July 1, 2004 and on January 15, 2005, for the time period covering July 1, 2004 to December 31, 2004:

A. For each waste generated at the Chemistry Department or any other portion of the facility between January 1, 2004 and December 31, 2004, Respondent shall:

- i. Identify the waste generated;
- ii. Provide the amount of waste generated;
- iii. Provide the date such waste was generated;
- iv. Provide a detailed description of the process which generated the waste;
- v. State whether the waste is a hazardous waste or not, list all applicable EPA hazardous waste codes, and provide a detailed discussion of how the hazardous waste determination was conducted (i.e. process knowledge, MSDSs, analytical testing, etc.);
- vi. Provide a detailed discussion on how the waste was managed on-site; and
- vii. Provide records documenting the date, amount, and where the waste was disposed (i.e., bill of lading copy, contractual agreement copy, hazardous waste manifest copy, etc.).

2. Reporting to EPA: All documents required to be submitted to EPA to fulfill the requirements of Paragraph 1 of this Final Order shall be sent to:

Brian Mitchell
U.S. Environmental Protection Agency
Air, RCRA, and Toxics Division
901 North Fifth Street
Kansas City, Kansas 66101

Parties Bound

5. This Final Order shall apply to and be binding upon Respondent, its agents, successors, and/or assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

Reservation of Rights

6. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation, for each day of non-compliance with the terms of this Final Order, or to seek any other remedy allowed by law.

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7. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to RCRA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

8. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

Termination

9. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

12/11/03
Date

William A. Spratlin
William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

12/11/2003
Date

Liz Huston
Liz Huston
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII

In the Matter of:
York College

RESPONDENT:
York College

Dec. 9, 2003
Date

Wayne Fuller
Name:
Title: President

IT IS SO ORDERED.

Dec. 15, 2003
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF York College, Respondent
Docket No. RCRA-07-2004-0045

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Liz Huston
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Wayne Baker
York College
1125 E 8th Street
York, Nebraska 68467

Dated: 12/16/03


Kathy Robinson
Regional Hearing Clerk